IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 7 of 2001

in

SPECIAL CIVIL APPLICATION No 6244 of 2000
with
Civil Application No.417 of 2001

with

LETTERS PATENT APPEAL No 14 of 2001
with
Civil Application No.609 of 2001
with
Letters Patent Appeal No.15 of 2001
with
Civil Application No.611 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL SECRETARY GUJARAT MAZDOOR SENA

Versus

MUNICIPAL COMMISSIONER

Appearance:

1. LETTERS PATENT APPEAL No. 7 of 2001
MR RD RAVAL for Appellants
MR PRANAV G DESAI for Respondents 1 and 2
Ms. Manisha Lavkumar, Assistant GOVERNMENT PLEADER,
for Respondent No. 3, 4

2. LETTERS PATENT APPEAL No 14 of 2001
MR RD RAVAL for Appellants
MR AK CLERK for Respondent No. 2
Ms.Manisha Lavkumar, Assistant GOVERNMENT PLEADER,
for Respondent Nos.1 and 3.

3. Letters Patent Appeal No.15 of 2001
Ms.Ketty A. Mehta for the appellants.
Ms. Manisha Lavkumar, Assistant Government Pleader,
for respondents 1, 2 and 4.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE P.B.MAJMUDAR)

1. The present Letters Patent Appeals are directed against the order of the learned single Judge, by which the learned single Judge has dismissed a bunch of Special Civil Applications. Various Special Civil Applications were filed before the learned single Judge challenging the action of terminating their services. The appellants also sought a relief of regular absorption in service.

2. It is the case of the appellants that they were appointed in connection with the scheme, entitled "Midday Meal Scheme" (`Scheme', for short) and that they are serving since many years. They were given orders for the fixed period, i.e. upto each academic year, and after break during the Vacation period, they were given fresh appointment orders. The grievance of the appellants is that even though they are working for so many years, their services have not been regularized by the Department and thereafter, by a Circular dated 8th May, 2000, their services were discontinued, as, in view of certain conditions in the Circular, they were not found to be eligible to be appointed in the Scheme any further.

The appellants, therefore, challenged the legality, validity and propriety of the Circular dated 8th May, 2000 issued by the Commissioner of Midday Meal Scheme on the ground that the said Circular is illegal, unlawful, arbitrary and violative of Articles 14, 16, 19 and 21 of the Constitution of India.

3. It is the say of the respondents that the appellants have been appointed for a specific period on specific terms and conditions and that the appointment was given only for a particular academic year. It is also stated that there was no relationship of master and servant and that there was no question of any discrimination.

4. On behalf of respondents 3 and 4, affidavit-in-reply has been filed by the Commissioner for Midday Meal Scheme, Gandhinagar, wherein it is mentioned that the appointment for the post of `Sanchalak' (Administrator) of the Centre under the said Scheme is not for continuous one year, but it is limited to the academic term of the school. It is further stated that the appointments in question are made on ad hoc basis and honorarium is being paid. On completion of the term, they are to be relieved from such service and for Vacation period, no honorarium is also paid. It is also the further say of the Commissioner that the State Government is entitled to frame a particular policy for achieving the underlying objects of the Scheme. It is further submitted that considering the Scheme in question, Circular dated 8th May, 2000 is framed for carrying out the object of the Scheme and that the said Resolution is not illegal or arbitrary in any nature.

5. We have heard both the sides in great detail. In order to examine the Scheme in question, it is necessary to refer to the Resolution of the Government dated 9th November, 1984. In order to see that the percentage of literacy level in Gujarat is increased, certain remedial measures were taken by the Government and in the said context, more particularly, for improving the standard of attendance in the schools and in order to raise the level of literacy, it was found that providing meal to the primary school children can play a very crucial role. With the said object, the aforesaid scheme was framed by way of Resolution dated 9th November, 1984. The Scheme in question is introduced with an object to improve the standard of attendance in schools at the primary level. The main object of the Scheme, therefore, is to attract attendance of the students at the primary level and, incidentally, in order to manage the Scheme, certain

persons were required to be entrusted with the work by giving honorarium. Therefore, the Scheme is introduced essentially to provide nutritious food to the children and it is also calculated to attract more students to the primary schools and curtail the number of drop outs. Incidentally, we may state that drop outs from Primary Schools in Gujarat has assumed an alarming proportion and Gujarat have attained notoriety in this respect. Incidentally, the Scheme may generate some employment in a particular village and the persons who are rendering their services in the said Scheme have been paid fixed amount of honorarium. It is no doubt true that the appellants were given work for a particular academic term and were given fixed honorarium every month. However, the Commissioner under the Scheme in question issued a Circular dated 8th May, 2000, which is the subject matter of these appeals. As per the said Circular, certain guidelines have been given for the purpose of appointing `Sanchalak' (Administrator), Cooks and Assistants. At this stage, it is required to be noted that for providing such service on honorarium basis, no recruitment Rules are framed because it is the say of the Government that the persons who are rendering their services in such Centre cannot be said to be `employees' as such. Therefore, on payment of Honorarium, at various Centres, the appointments have been made as per the policy decision or as per the Circular or Guidelines of the Government. As per the Circular dated 8th May, 2000, it is clear that certain people will be eligible for getting appointment at such Centres. It has been provided in Clause 5 of the said Circular that for the purpose of selection at a particular Centre on honorarium basis, preference should be given to a widow in a village or a deserted lady and a person who is in an economically backward condition, viz., a person living below poverty line. It is also provided that only one person from each family can be appointed. Clause 12 of the Circular puts a prohibition on certain categories of persons for getting appointment in a particular Centre to the posts of Administrator, Cook or Assistant. The aforesaid Clause 12 of the said Circular reads as under :

> " ... ...
>
> 12. Any person falling under the categories mentioned below, being unsuitable for appointment to the posts of Midday Meal worker, cook and helper shall not be appointed :
>
> (A) Elected members or Office bearer of

Local Bodies (Panchayat, Municipality, Municipal Corporation) or employees of State Government and Husband/Wife/Son/Daughter or dependant of such employee/employees of Local Institute or Government Institute receiving grant from the State Government.

(B) The part-time or full time employees or Husband/Wife/Son/Daughter and dependents of such employees of State Government or Central Government undertakings.

(C) The owners of Flour Mills,

(D) The person doing business of Vegetables, spices and firewood.

(E) The person receiving Honorarium at any post.

(F) The employees of State Government or Central Government Enterprise, who have been compulsorily retired, removed or dismissed from service.

(G) The person not suitable for any reason for being appointed to the post of worker/cook and helper.

(H) The person running Fair Price shop is also not suitable for appointment.

(I) The person who have performed duty in Midday Meal Centre and released from service for serious irregularity (Except, permission has been granted by the Commissioner for making Appeal).

... ..."

6. On behalf of the appellants, it was argued that

it is not open for the State Government to exclude the married woman totally from consideration for appointment to the post in question and simply because the husband or son or any relative of such lady is employed in Government service, the same should not be made the basis for excluding such lady employee from being considered for appointment in the Scheme in question. It is argued that the said Circular is, therefore, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India. It is argued that it is not open for the State to discriminate a lady employee, simply because she is married to a person, holding a particular job, by excluding her from the zone of consideration. It is further argued that even otherwise, the said Circular is absolutely arbitrary as those lady employees, whose husbands or relatives are serving in private institutions, have not been excluded from consideration and simply because the husbands of the appellants are serving in Government/Government Undertakings, on that ground, they have been excluded from the zone of consideration. It is further argued that even the husband or son, as the case may be, of a lady employee, serving in an institution, which is receiving grant from the Government, is also excluded from the zone of consideration and that under these circumstances, the aforesaid Circular, on the face of it, is unconstitutional and that the appellants have got equal right to be considered for appointment in the Scheme. It is also argued that even it is open for the Government to give preference to a widow or a destitute lady or a lady or a person living below the poverty line. But, there is no reason why after giving such preference, if any such post is vacant, the claim of the appellants should not be considered by the Government. It is also argued that there is absolutely no justification, therefore, to exclude the appellants totally from consideration for appointment, and the Scheme in question being a Government Scheme, all the citizens, without discrimination on the ground of sex or whether they are married or not, have equal right to participate in such Scheme and that there should not be any discrimination in this behalf.

7. Mr.R.D. Raval, who is appearing for some of the appellants, has argued that the appellants, being experienced persons, having served in the particular Centre for years, are better trained in preparation of food since they are serving at a particular Centre since years and if these people are excluded totally from the Scheme, it will give a jolt to the Scheme and the main object will be frustrated if the appellants are excluded

from being considered for appointment in the Centre which is being run under the Scheme in question. He further submitted that the appellants are engaged in preparing food and managing its Centre since long and, therefore, their experience is required in order to see that the Scheme effectively functions.

8. Ms.K.A. Mehta, who is appearing for some of the appellants, argued that, in any case, even if preference to a particular category may be permissible, then also, if posts are still left out, there is no reason why the appellants should not be considered in the available posts. She further submitted that total exclusion of the appellants from consideration is arbitrary, unconstitutional and illegal. It was also argued that no discrimination should be made between employees serving in rural areas and city areas.

9. The question which is required to be considered is whether for appointment in the Centre a preference can be given to the above-referred category, i.e. widow, destitute or those who are living below poverty line, and whether certain categories like the present appellants can be excluded from being appointed at a particular Centre. As we have referred earlier, as per the Resolution dated 9th November, 1984, the Scheme for providing midday meals to the children in the primary schools in Gujarat is introduced. The basic idea for introducing the Scheme is to check drop out rate at the primary school level. The main purpose, therefore, is to see that at the primary level, literacy standard is increased as much as possible and for that purpose, midday meal is one of the incentives to achieve the said object. The main object of the Scheme, therefore, is not to provide employment or to provide any honorary service, but the main object is to attract the students at the primary level and for that purpose, certain incentives are introduced. Though, incidentally, in order to manage such Scheme, services of certain persons, no doubt, are required to be taken. With the said object, the Scheme in question is introduced.

10. It was argued by Ms. Manisha Lavkumar, for the State, that in strict sense, the persons, who are appointed in the Scheme on honorarium basis for rendering services, cannot be treated as `employees', and, in that sense, no employment is generated in favour of such persons, who have been appointed on fixed remuneration to discharge the duties in the particular Centre. She further pointed out that the aim is to see that those who are living below poverty line and those who have got no

support, should get preference for being appointed in a particular Centre, as, by honorarium, which they are getting, they can survive in these hard days. It was pointed out by her that the restriction put in the Circular in question is a reasonable restriction and it is in the interest of families who are remaining without any work and without means of earning even a single paisa, and, therefore, preference is given to such category of employees, and preferential treatment is given to a separate class. It is stated by her that the said discrimination is, therefore, a "protective discrimination" for a particular class of society and, therefore, it cannot be said that said action is, in any way, violative of Article 14 or Article 16 of the Constitution of India. It is also pointed out by her that the aforesaid policy decision is only for an academic year and the Government, after the particular term is over, will again review the situation before issuing another Circular for the subsequent year. It is argued by her that considering the past experience, it is felt that those employees, who are appointed at a particular centre, are dominating their position if their relatives, like husband, etc., are in Government service, and they will not allow others to come in and, therefore, the entire scheme will be dominated or monopolised, if any relative of such candidate / employee is in Government service. Therefore, in order to see that the benefit may genuinely go to such category of employees, it is necessary to restrict the entry of persons, whose husband, or son, as the case may be, is in Government service. The said exclusion, therefore, is on reasonable ground. It is argued that unless there is a total exclusion of relatives of Government servants, it will not be possible for the Government to reach out to the category of persons who are living below poverty line or widows or destitute. It is argued that the Government servants are protected by service rules and the Government have full data available with them and if an employee is in Government service, the Government can have its check and control. Same thing may not be possible regarding those persons whose husband or son, as the case may be, is in private employment and even data of such private employment may not be available with the Government. She added that, in private service, there may not be any security of employment which may be available in Government service and, therefore, restriction has been imposed in the Circular qua those lady employees whose husband, son, as the case may be, is employed in Government service. The said exclusion, therefore, is absolutely justified and bona fide and in order to protect the interest of a particular class of

the society.

11. Mr.A.K. Clerk and Mr.P.G. Desai, appearing for the Rajkot Municipal Corporation, and Baroda Municipal Corporation, have supported the arguments of the learned A.G.P.

12. We have considered the scheme in detail, which was introduced as back as in 1984. The Scheme is essentially meant for increasing the percentage of literacy at the primary level and in order to check the drop out, incentive of midday meal is introduced. It is not possible for us to agree with the submission of Mr.Raval that if certain categories of employees, like the appellants, who are very experienced in preparing the food, etc., are excluded, it will give a jolt to the scheme and, there is no basis or foundation for coming to such a conclusion. On the contrary, as per the say of the learned AGP, the appellants have tried to monopolise the scheme, and, according to the AGP, past experience has shown that if the husband or any other close relative of such employees is in Government service, the entire scheme was monopolised by them only and, ultimately, it was not possible for the Government to reach out to the categories of widow, destitute or those who are living below the poverty line. It was argued, however, by Ms. Mehta that the husbands of the appellants are also not very well placed as they are serving in Class IV employment or in such lowly paid service of the State Government. However, it is required to be noted that the employees serving in the State Government are naturally getting pay scale prescribed by the Government. Prima facie, it cannot be said that they are living below the poverty line. But, even otherwise, in order to achieve the object of generating employment at rural level and in order to see that those who are living below poverty line are given some succour and in order to give benefit to poor widows or destitute, if in effective implementation of the scheme to provide them employment, honorarium is required to be given, naturally, unless certain categories, which, as per the say of the AGP, had, all throughout, dominated or monopolised the Scheme in question, are excluded, it will not be possible for the Government to achieve the object in this connection of generating employment in favour of this category of employees. We are, therefore, of the opinion that, considering the Scheme as well as considering the object of the Government to give some financial aid by way of remuneration to those who are living below poverty line, if any restriction has been made, by which entry to certain category is restricted in the said Centre, it

cannot be said that the action is unconstitutional or illegal. It is no doubt true that all the citizens have right to take part equally in public employment, but, considering the scheme in question, this cannot be said to be `employment' at all. A mere incentive or honorarium is given for rendering services for a particular midday meal centre. It, therefore, cannot be said that simply because the Circular gives preference or excludes certain categories, based on proper grounds, the same is unconstitutional or illegal. One has to consider the object of the Scheme and the nature of services which are required to be rendered under the Scheme. Looking to the Scheme, therefore, we are of the opinion that, in a sense, this can never be considered as an `employment' with the State and certain incentives and benefits are given to a particular class and, therefore, even if the same can be said to be `discrimination', it will amount to "protective discrimination" to a particular class, i.e. in favour of poor widow, destitute, or those who are living below poverty line. In order to effectively achieve that object, it is necessary to prevent the entry of the appellants, whose relatives / husbands are employed in Government service. Those who are unequal are treated separately and for their benefit and for their protection, entry of the appellants is required to be restricted and if that is done, it cannot be said that the action is discriminatory, arbitrary, illegal or unconstitutional. Even otherwise, as stated earlier, this Circular is issued only for a particular academic year and, ultimately, if it is found by the Government that adequate candidates are not available from the aforeaid category, naturally, the decision can be reviewed by the Government from time to time. However, as the record stands, as on today, we are satisfied that in response to the public advertisement, so many applications were received by the Government from the categories of the employees, whom we have referred above. On the aforesaid ground, therefore, we do not find any substance in the argument of Mr.Raval or Ms. Mehta in this connection. Subsequently, in amendment of the Circular, it has been provided that there is no bar in considering for employment under the Scheme father and son who are residing separately, even if one may be in Government employment. Therefore, looking to the facts and circumstances of the case, as well as looking to the Scheme in question, we are of the opinion that in order to reach out to the category of poor, widow or destitute, it is necessary to restrict the entry to certain categories, like the appellants; otherwise, there is all apprehension that they will monopolise the Scheme and in past, the same was experienced by the Government. This

Circular, therefore, is issued to protect and safeguard the interest of the category of employees, which is a separate class by itself and for that protection, necessary guidance is issued in the Circular. The same, therefore, cannot be said to be illegal or arbitrary.

13. On behalf of the appellants, certain judgments were cited at the Bar. Firstly, they have placed reliance on the decision of the Apex Court in Krishan Chander v. Central Tractor Organisation, AIR 1962 SC 602, wherein the Supreme Court held as under :-

> " ... ...
>
> A person who has once been employed under the Government, and whose services have been terminated by reason of his antecedents, may or may not stand on an equal footing with other candidates not under such a ban. Of course, the ban imposed by Government should have a reasonable basis and must have some relation to his suitability for employment or appointment to an office. But an arbitrary imposition of a ban against the employment of a certain person under the Government amounts to denial of right of equal opportunity of employment, guaranteed under Art. 16(1) of the Constitution.
>
> ... ...
>
> The petitioner had been deprived of his Constitutional right contained in Art. 16(1) of the Constitution. So long as the ban subsisted, any application made by the petitioner for employment under the State was bound to be treated as waste paper. The fundamental right guaranteed by the Constitution was not only to make an application for a post under the Government but the further right to be considered on merits for the post for which an application had been made. The `ban' complained of apparently was against his being considered on merits. It was a ban which deprived him of that guaranteed right. The inference was clear that the petitioner had not been fairly treated.

... ... "

However, we are of the opinion that, in the instant case, in order to protect interests of a particular class, which is a class by itself, certain restrictions have been imposed and the appellants have been excluded from consideration. Said restriction is a reasonable one, viz., in order to achieve the object to safeguard the interest of a particular category, i.e. widow, destitute, etc.

14. Reliance has also been placed on the decision of the Honourable Supreme Court in Shankar Balaji Waje v. The State of Maharashtra, AIR 1962 SC 517. The aforesaid judgment was in the context of the Factories Act. It was found that a bidi roller is not a `workman'. It was also stated that the concept of `employment' involves three ingredients (1) employer, (2) employee and (3) the contract of employment. The employer is one who employs, i.e. one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder employee agrees to serve the employer subject to his control and supervision.

However, so far as the present scheme is concerned, in the context of the Scheme itself, we have said that in order to give services at a particular Centre, if some work is being performed by the person engaged in the scheme, the same may not be treated as an `employment' in the popular sense of the said expression. Here, some honorarium is given per month for rendering the services. But, in any case, even for the purpose of giving that honorarium or other benefit, the benefit is restricted only to the weaker sections of the Society and if restriction is imposed for giving that benefit of honorarium for the so-called `employment', then also such restriction cannot be said to be unreasonable or arbitrary.

15. Reliance has also been placed on the judgment of the Supreme Court in Dasaratha Rama Rao v. State of Andhra Pradesh, AIR 1961 SC 564. In the said decision, the Honourable Supreme Court has laid down as under :-

" ... ...

There can be no doubt that S.6(1) of the

> Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the persons to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art. 16(2) of the Constitution.
>
> ... ... "

However, in the instant case, the benefit of payment of honorarium and rendering services at the particular entre is restricted to a particular class by itself. The aforesaid ratio, therefore, cannot be said to be applicable in the present case.

16. In order to show that it is an employment with the Government, reference is also made to the judgment of the Supreme Court in the case of Harish Chandra Bajpai v. Triloki Singh and another. AIR 1957 SC 444. However, as stated earlier, even if it can be construed as an employment, then also, we are of the opinion that there is a reasonable classification made between two sets of employees and in order to protect the separate class, some restrictions have been made for considering the other categories, like the appellants. In our view, the same is a reasonable classification.

17. Mr.Raval has also relied upon the decision of the Apex Court in C.B. Muthamma v. Union of India and others, (1979) 4 SCC 260. It has been held that sex discrimination in Service Rules would be unconstitutional unless justified by peculiarities and nature of the employment. It was held that rule making marriage of women employees and their domestic involvement a ground for disentitlement would be unconstitutional. It is indeed true that if the appellants are discriminated from being considered for appointment only on the ground that because they are married, they would not be considered for employment, it is required to be noted that the appellants are not discriminated against from consideration on the ground that they are married. The reason for not considering them has clearly been narrated by the learned Assistant Government Pleader and that the object is to see that the Scheme may not be monopolised by Government servants or their relatives and with that object and in order to reaching out to the category

concerned, the restrictions have been imposed.

18. Mr.Raval has also relied upon the decision of the Apex Court in Mrs. Valsamma Paul v. Cochin University and others, AIR 1996 SC 1011, which is in connection with the regularisation of employment. However, in the instant case, the question is regarding exclusion of certain category from consideration for being absorbed or appointed in the Centre under the Scheme in question. In that view of the matter, now the question of relaxation of service conditions of the appellants cannot be considered.

19. Reliance has also been placed on the judgment of the Apex Court in Indra Sawhney and others v. Union of India and others, 1992 Supp. (3) SCC 217. The aforesaid judgment of the Supreme Court was in connection with the reservation for backward class of the citizens in the service of the State. Various aspects about Article 16(4) have been considered by the Honourable Supreme Court in connection with the reservation policy in employment.

20. On behalf of the respondents reliance was also placed on the judgment of the Honourable Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana and others, (1994) 4 SCC 138, which is in connection with compassionate appointment. It has been said that object of compassionate appointment is to enable the penurious family of the deceased employee to tide over sudden financial crisis and not to provide employment.

21. On behalf of the respondents, reliance has also been made on the decision of the Apex Court in M.P. Oil Extraction and anr. v. State of Madhya Pradesh and Ors., JT 1997 (6) S.C. 97. In the said decision, the Apex Court had an occasion to consider the industrial policy regarding supply of Sal seeds by the Madhya Pradesh Government to newly set up industries at the instance of the State Government. In the said decision, the Supreme Court held that Article 14 has an inbuilt flexibility and permits different treatment to unequals. The Supreme Court was of the opinion that favoured treatment to persons situated in backward or tribal area cannot be held to be illegal or arbitrary. Classification based on geographical situation is a rational one. Renewal of agreement is neither illegal nor arbitrary, the Supreme Court opined. Further, extension of protection for a further period does not warrant judicial review. Talking about the doctrine of legitimate expectation, the Apex Court held that it

operates in the domain of public law and is an enforceable right. The Supreme Court in the said decision upheld the rate of royalty based on pricing formula and the Apex Court held that the State Government is not expected to be dictated by considerations of more revenue. However, it was held that the State Government also should consider the need of proper distribution.

Regarding the power of judicial review of Executive and Legislative action, the Apex Court held that the Court should not out-step the limit and tinker with the policy decisions of the State Government and the power of judicial review be kept within the bounds of constitutional scheme.

The Apex Court held that classification based on geographical situation is a rational one and the aid principle has been aptly described by the Honourable Supreme Court as under :-

> " ... ...
>
> It has been held by the High Court that the industrial units which were commissioned on the invitation of the State to undertake oil extraction operation on the assurance of supply of sal seeds by the State, stand on a separate footing. Such decision of the High Court though challenged before this Court, has not been upset. The distinctive features between the industrial units set up at the instance of the State Government and old existing units are based on objective criteria. Therefore, the said two classes of industries are not similarly circumstanced. Article 14 prohibits discrimination amongst the equals but it should be appreciated that Article 14 has inbuilt flexibility and also permits different treatment to unequals. It may also be noted here that Bastar Oil Mills is situated at Jagdalpur which is admittedly a backward and tribal area. The special treatment given to Bastar Oil Mill by assuring supply of 20,000 M.T. of sal seeds under the impugned agreement cannot be held to be per se illegal and arbitrary. Classification on the basis of geographical situation has a rational basis and has been recognised by this Court as indicated in

the decisions referred to hereinabove. It may also be noted that the agreement of M/s. Sal Udyog was terminated by the State Government for which reference to arbitration was made in terms of the agreement between the parties. Initially, the dispute was referred to the arbitration of a retired Judge of the Court, but since the same could not be completed within the time frame, the arbitration was later on referred to a District Judge. During the pendency of arbitration proceedings, the industrial policy of the State Government was reviewed by a high power committee formed by the State Government. Such committee considered the question of continuance of protective measures to the selected industries by assuring supply of sal seeds by the State Government. The case of M/s Sal Udyog was also considered by such high power committee and the committee recommended in favour of M/s. Sal Udyog. Therafter, the State Government renewed the agreement with the usual renewal clause. Such action of the State Government cannot be held to be illegal or arbitrary.

... ... "

(emphasis supplied)

22. Reference was also made to the judgment in Indra Sawhney v. Union of India, (2000) 1 SCC 168, regarding identification of Creamy Layer amongst the backward classes. As stated by us earlier, the Government has taken the policy decision with the noble object of giving protection to a particular class of the Society. If this restriction is not placed regarding prohibiting the entry of certain category in the scheme, may be for rendering service or even employment, the benefit which is sought to be given to the separate category or class may not get that benefit and the scheme is likely to be monopolised only by a particular class of employees. Though the argument of the appellants is that at least they can be considered after giving preference to the aforesaid category, after examining the scheme and after considering the question in great detail, we are of the opinion that the apprehension of the State Government, prima facie, seems to be justified, as, if this category

of employees is permitted even in the residuary category, then also, it may happen that they may achieve their object in preventing the protected category of employees from getting the benefit of service under the Scheme, as because of the past experience, it has been felt by the Government that if they are allowed to be absorbed under the Scheme, even as a last preference, then also, they may not allow the protected class of employees to get benefit of rendering service / employment under the Scheme. As stated earlier, this Circular is only for a particular academic year. The Government may reconsider the same in future, if it is not possible to get full employment from this particular class of employees and if necessary, in future, question about inclusion of employees, like the appellants, in residue posts can be considered. However, it can be said that the policy as on today is in no way illegal, arbitrary, unconstitutional or discriminatory. As stated earlier, only to protect the particular class, these restrictions have been imposed. Considering the object of the Scheme, incidentally, if some benefits can be given to poor people by giving them remuneration for rendering service, and if the same is given with reasonable restrictions, with an object of protecting particular class of persons, it cannot be said that the aforesaid decision of the Government is unconstitutional or discriminatory. We are also not impressed by the argument of the appellants that there is discrimination between those who are residing in rural area and those who are residing in urban area. Classification is just and rational and with a noble object to see that particular categories of widow, poor or destitute or poorest amongst the poor may get the chance of getting some monetary benefit by rendering service under the Scheme in question. Those who are already having something to bank upon can be replaced by those who have nothing to bank upon or those who are practically starving and, therefore, if such category is protected by necessary instructions of the Government, we do not find any justification in striking down the aforesaid policy decision of the Government, which is announced with pious purpose of helping the weaker sections of the society. Under these circumstances, we do not find any merit in these Letters Patent Appeals.

23. Before parting, in a nutshell, we may state as under :-

The Circular envisages a policy based on the theory of justice which specifies some primary social goods listed in broad categories such as rights and liberties, opportunities and powers and income and

wealth. This policy or initiative maximises the amount of primary social goods enjoyed by individuals who receive least of them. It is a development policy aimed at improving the well being of the poorest, removing their poverty by raising their incomes and wealth and ensuring their rights and liberties, opportunities and powers. In a simpler form, this policy exhorts maximising the advantage of the "worst off", no matter how that affects the advantages of all others. In many ways, semi-feudal India metes out a raw deal to the weaker sex, underprivileged and the downtrodden. Our cultural legacy, through law, legend and life, of regarding women as fairer but weaker than man, haunts our value system in which we poetize, even romanticize, we despise, even enslave womankind. Right to work and live is made available to the "worst off" class. It is a humble attempt on the part of the Government to liberate the most oppressed among the oppressed from serfdom. Persons, whose cause is sought to be espoused by the present Circular, are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons often require separate treatment. Every classification is in some degree likely to produce some inequality and some production of inequality is not enough to strike down the Circular impugned in the petitions, which were dismissed by the learned single Judge. Viewed in this light, the liberation and improvement of the social, economic, legal and political status of the most oppressed among the oppressed from the serfdom becomes more than a focus of a crusade for human rights.

24. We, therefore, confirm the order passed by the learned single Judge and dismiss all these Appeals. Accordingly, the appeals are dismissed. Civil Applications are also dismissed. Interim relief, if any, shall stand vacated. No costs.

February 26, 2001. (D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

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(apj)